



**MEMORANDUM**

**Date:** 16 May 2008

**TO:** Kevin Adler, RPM SR-6J  
EPA Remedial Response Branch 1, Region 5

**From:** Todd Goeks (6-7527) SR-6J  
Coastal Resource Coordinator, Region 5

**Subject:** Remedial considerations for OMC, Waukegan Harbor OU

NOAA respectfully submits the following information for consideration by the EPA Remedy Review Board in evaluating remedial options for the Waukegan Harbor portion of the Waukegan, IL, Outboard Marine Corporation (OMC) Superfund site. NOAA has been involved in the site since 2003 both in its role providing technical support to EPA and in its natural resource trustee role. For those members of the Remedy Review Board that may not be familiar with NOAA's trusteeship in the Great Lakes, I have provided the following synopsis of NOAA's trustee authority as it pertains to the Great Lakes.

The Secretary of Commerce acts as trustee for natural resources managed or controlled by the U.S. Department of Commerce (DOC), including their supporting ecosystems [40 C.F.R. § 300.600(b), (b)(1)]. Pursuant to the Great Lakes Critical Programs Act of 1990 [33 U.S.C. § 1268 (Great Lakes Act)], and the Great Lakes Water Quality Agreement of 1978, as amended by the Water Quality Agreement of 1987 (Great Lakes Water Quality Agreement), the United States, in part through DOC, manages and/or controls the water and sediments of the Great Lakes System.

The Secretary of Commerce also acts as trustee for natural resources managed or controlled by other federal agencies and that are found in, under, or using waters navigable by deep draft vessels, tidally influenced waters, or waters of the contiguous zone, the exclusive economic zone, and the outer continental shelf. Therefore, all

federally managed or controlled resources that are found in those waters, such as water and sediments that form navigation channels and that are managed, controlled, and maintained by the Army Corps of Engineers, and the fisheries that are controlled by the Food and Drug Administration through derivation of action levels, fall within DOC trusteeship. Similarly, the water and sediment of the Great Lakes System are within the administrative jurisdiction of the United States, and are federally managed or controlled pursuant to the Great Lakes Act and the Great Lakes Water Quality Agreement.

The Secretary of DOC has delegated his authority to act as trustee to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) [DOO 15-10, at § 3.01(mm)]. Pursuant to this delegation, NOAA has trusteeship for the water, sediment, and the biological resources, of the Great Lakes and their supporting ecosystems.

Waukegan Harbor is the only deep-draft commercial harbor between Milwaukee and Chicago capable of handling large shipments of cement, gypsum, and other building materials. Port clients include both deep-draft commercial shippers and recreational boaters. The U. S. Army Corps of Engineers (USACE) was authorized by Congress to construct and maintain the harbor. In December 1970 under authority of Section 201 of Public Law 89-298, Congress authorized the deepening of the Waukegan Harbor federal navigation channel to enhance commerce and navigation safety. The federal navigation channel of Waukegan Harbor includes the Outer Harbor, Entrance Channel, the Inner Harbor, a small portion of the Docking Area, and the Inner Harbor Extension. The Inner Federal Channel is authorized to 23 feet below Great Lakes Low Water Datum (LWD) and the Outer Federal Channel is authorized to 25 feet below LWD. The Inner Federal Channel was previously authorized to a depth of 18 feet below LWD and the Outer Federal Channel was authorized at 23 feet below LWD.

Due to the presence of PCB-contaminated sediment and the difficulties associated with obtaining an acceptable disposal option, USACE has suspended routine operations and maintenance dredging of the Inner Federal Channel since 1969 and has not implemented the Congressionally authorized deepening of the federal navigation channel. Though the inner channel is authorized for a commercial navigation depth of -23 feet LWD, portions of the channel are currently limited to 15-17 feet below LWD. This restricted draft requires commercial vessels to carry a partial or “light-load”, which can represent up to 40 percent reduction in potential cargo capacity.

Hazardous-substance-contaminated sediment in the Waukegan Harbor federal navigation channel has precluded routine operation and maintenance dredging, causing an impediment to navigation and concomitant loss of navigation services. NOAA supports remedial actions that will protect human health and the environment, while not precluding future operational maintenance of the federal navigation channel.

Evaluation of alternatives with component remedial options for the federal channel within the Waukegan Harbor portion of the OMC site must consider that the federal channel portion of the harbor is Congressionally authorized at 23 feet below LWD for the Inner

Harbor and 25 feet below LWD for the Outer Harbor. Any remedial actions implemented within the federal navigation channel boundaries may not preclude the current and future operational maintenance of the authorized channel depths without prior Congressional action to re-authorize the channel depths.

The implication for remedial actions being evaluated for the Waukegan Harbor operable unit is that, for any alternative including a component of containing hazardous substances in place with an engineered cap, the cap would need to be placed such that the elevation of the top of the cap would be a minimum of two feet below the bottom of the authorized channel to ensure that future maintenance dredging would not disturb the cap. This would require the top of any cap placed in the Inner Harbor portion of the federal navigation channel to be no higher than 25 feet below LWD. Similarly, the top of any cap placed in the Outer Harbor would need to be no higher than 27 feet below LWD.

Capping hazardous substance contaminated sediments within the federal navigation channel at a depth less than this would require EPA to seek re-authorization of the federal channel by Congress to the desired depth prior to constructing the remedy. Without re-authorization of the channel depths, placement of a cap within the federal navigation channel at an elevation above the full authorized depth is not an implementable option.